



# Property Assessed Clean Energy (PACE) Financing PROGRAM MANUAL

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## Executive Summary

The City of Milwaukee recognizes that stimulating the market for cost-effective energy efficiency and water saving upgrades in commercial buildings as a *public purpose*, since these upgrades in properties located within the City increase property values, protect the tax base, increase local economic activity, provide improved environmental benefits, and promote the general welfare of the people of the City of Milwaukee

The *Property Assessed Clean Energy (PACE) Financing Program* creates a strong incentive for some commercial property owners to undertake energy efficiency upgrades in their buildings. Commercial property owners, whose tenants, by their lease terms, pay the energy bills, may not see a strong business case for investing in energy efficiency upgrades in their buildings. The Me<sup>2</sup> PACE Financing Program strengthens the business case for energy upgrades by potentially allowing a property owner to invest in an energy efficiency upgrade and pass the energy savings and upgrade loan repayments to their tenants via a governmental special charge<sup>1</sup>. Additionally, PACE financing provides access to long-term financing, so that the energy savings from a project can meet or exceed loan repayment costs. Finally, the PACE financing is tied to the property, so that the building owner only pays for the improvements while they are in the building, and subsequent owners can pay the annual special charge while they occupy the building and benefit from the energy savings.

Through the *PACE Financing Program*, property owners develop a qualifying energy efficiency project. They then arrange project financing with a financial institution of their choice. The property owner and lender then apply to the City of Milwaukee to designate loan repayments as a governmental special charge. If approved, the City, the Property Owner, and Financial Institution, will enter into a three party agreement to finance the project. The program is potentially open to any lender that would like to participate. Lenders currently expressing interest in the program include [Clean Fund](#) and the [Milwaukee Economic Development Corporation \(MEDC\)](#) to provide up to \$100 million of private capital to the program. The City may formally solicit lenders to the program.

The PACE program will be marketed under the Me<sup>2</sup> brand name. The program is administered by the Milwaukee Office of Environmental Sustainability, in partnership with MEDC.

## Authorization

**State of Wisconsin Enabling Statute:** [66.0627\(8\)](#): A political subdivision may make a loan, or enter into an agreement regarding loan repayments to a 3rd party for owner-arranged or lessee-arranged financing, to an owner or lessee of a premises located in the political subdivision for making or installing an energy efficiency improvement, a water efficiency improvement, or a

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<sup>1</sup> Treatment as a special charge *may* allow a property owner to pass through the cost of the improvements to the building's tenants under certain types of lease agreements. The City provides no advice on whether such pass-through is legally allowable and the property owner is solely dependent on seeking independent legal and/or accounting advice if such a pass-through of special charges under the City Ordinance is permissible. The City will not mediate any disputes between a property owner and tenants regarding the disposition or collection of the special charge.

renewable resource application to the premises. If a political subdivision makes a loan or enters into an agreement under this paragraph, the political subdivision may collect the loan repayment as a special charge under this section. Notwithstanding sub. (4), a special charge imposed under this paragraph may be collected in installments and may be included in the current or next tax roll for collection and settlement under ch. 74 even if the special charge is not delinquent.

(b) A political subdivision that imposes a special charge under par. (a) may permit special charge installments to be collected by a 3rd party that has provided financing for the improvement or application and may require that the 3rd party inform the political subdivision if a special charge installment is delinquent.

(c) An installment payment authorized under par. (a) that is delinquent becomes a lien on the property that benefits from the improvement or application as of the date of delinquency. A lien under this paragraph has the same priority as a special assessment lien.

(d) A political subdivision that, under par. (a), makes a loan to, or enters an agreement with, an owner for making or installing an improvement or application that costs \$250,000 or more shall require the owner to obtain a written guarantee from the contractor or project engineer that the improvement or application will achieve a savings-to-investment ratio of greater than 1.0 and that the contractor or engineer will annually pay the owner any shortfall in savings below this level. The political subdivision may determine the method by which a guarantee under this paragraph is enforced.

(e) If the making or installing of an improvement or application under par. (a) costs less than \$250,000, the political subdivision may require a 3rd-party technical review of the projected savings of the improvement or application as a condition of making a loan or entering into an agreement under par. (a). Notwithstanding the provisions of sub. (4), a special charge imposed under this subsection may be collected in installments and may be included in the current or next tax roll for collection and settlement under ch. 74 even if the special charge is not delinquent.

**City of Milwaukee Authorizing Resolution:** Resolution 121591, sponsored by Aldermen Michael Murphy and Nik Kovac and signed by Mayor Tom Barrett, authorized City Ordinance 304-26.5, described in full in Appendix A. This ordinance facilitates owner-arranged financing with a third-party lender for commercial property owners making renovations to improve the energy efficiency to their properties by levying annual installments as a special charge onto the property tax bill. The city will make all reasonable and customary efforts to collect these special charges once they are levied onto the tax bill and remit them to the lender when collected. The city will be entitled to an administrative fee for services rendered in collecting and otherwise processing these special charge payments. By levying these annual installments as a special charge onto the property tax bill, this ordinance places a portion of a debt owed by the property owner to a private lender before the owner's property tax obligation to the city. However, in the event of foreclosure, the city receives all foreclosure proceeds and will pay the private lender only after the city receives full payment for all property taxes and other charges levied against the foreclosed property. In addition, this ordinance repeals code provisions which effectively guaranteed one year's principal and interest payments on clean energy financing loans through a grant-funded reserve fund.

## General Program Information and Eligibility

1. **Administering Agency:** City of Milwaukee Department of Administration, Office of Environmental Sustainability (OES), in partnership with the Milwaukee Economic Development Corporation and the City Treasurer.
2. **Eligible Properties:** This Program is only available to commercial properties located within the City of Milwaukee. This includes for-profit businesses and non-governmental, non-residential, tax-exempt properties such as privately-operated community centers and hospitals. The property may be a commercially-owned multifamily building with four or more dwelling units. Condominium or residential cooperatives must meet the conditions outlined in the “*Buildings with Multiple Taxkeys*” section.
3. **Eligible Projects:** An eligible energy efficiency, water efficiency, or renewable energy improvement project must:
  - 3.1. Have a minimum cost of \$20,000 and maximum cost of \$3 million. PACE projects typically cannot exceed 20% of the property value. *PACE lenders may have additional limits based on facility use or loan to value ratios.* For example, a commercial building with an assessed or appraised value of \$1,000,000 could do a PACE project costing no more than \$200,000. The City will normally use assessed value for this determination, except in the case of property-tax exempt buildings that do not have an assessed property value. Owners of property-tax exempt properties or property owners that would like to use a higher property valuation must provide a copy of a full, independent appraisal done in the past 12 months.
  - 3.2. Have a useful life of at least five years. PACE financing terms should not exceed the expected life of the proposed improvement. See eligible useful life estimates included in Appendix B. For projects that include multiple improvements, the average weighted useful life of the new equipment must equal or exceed the term of the PACE financing.
  - 3.3. Be permanently affixed to the real property or building, and the property owner will leave the improvements with the property upon sale or transfer of title.
  - 3.4. Reduce energy or water usage, or generate renewable power for the property. If the property is vacant or underutilized at project inception, the energy savings of new equipment can be compared to the energy use of existing equipment using modeling simulations under a new building use or higher occupancy rates.
  - 3.5. Examples of eligible projects include but are not limited to (See Appendix B for more detail):
    - High efficiency lighting
    - Heating ventilation air conditioning (HVAC) upgrades
    - New automated building and HVAC controls
    - Variable speed drives (VSDs) on motors fans and pumps
    - High efficiency chillers, boilers and furnaces
    - High efficiency hot water heating systems

- Combustion and burner upgrades
- Water conservation measures
- Heat recovery and steam traps
- Building enclosure/envelope improvements
- Building automation (energy management) systems
- Renewable energy systems
- Engineering and project development costs associated with the above improvements)

3.6. Ineligible projects include but are not limited to:

- Compact fluorescent, screw-in lamps.
- Plug load devices.
- Measures that are not permanently installed and can be easily removed.
- Measures that save energy solely due to operational or behavioral changes
- Power correction, power conditioning.
- Any measure that does not result in energy savings or renewable energy production.
- Any measure that cannot be explained in terms of industry-standard engineering or scientific principles.
- Refrigerant charge (AC/Split Systems/Heat Pumps)

3.7. **Projects over \$250,000:** The energy and/or water savings from the project should exceed the cost of the improvements over the life of the improvement. State law requires that PACE a project that costs \$250,000 or more “shall require the owner to obtain a written guarantee from the contractor or project engineer that the improvement or application will achieve a savings-to- investment ratio of greater than 1.0 and that the contractor or engineer will annually pay the owner any shortfall in savings below this level.” The City of Milwaukee determines that under this statute, the **energy cost savings, water cost savings, maintenance cost savings, and other documentable operations savings over the estimated useful life of the improvements must be greater than the principal cost of the improvements.** The performance guarantee should include annual estimates of savings so that its accuracy can be evaluated annually. This calculation can assume increases to the price of energy and water over time, using projections provided in the US Energy Information Administration Annual Energy Outlook. The written guarantee of energy savings must cover a **minimum period of three years** following installation of the PACE-financed equipment. The investment shall be construed as the project cost quoted by the contractor and excludes interest and fees contained in the municipal special charge.

3.8. **Projects less than \$250,000:** For projects less than \$250,000 the property owner must submit a professional energy and/or water audit on the property that corresponds with the proposed improvements the owner is seeking to finance. The audit should meet ASHRAE Level 1 standards or be a comparable energy analysis (i.e. development of projected energy savings, cost savings, and project costs).

4. **Eligible Property Owners:** The person or persons possessing the most recent fee title or land contract vendee’s interest of an eligible property as shown by the records of the Milwaukee County Register of Deeds. To be eligible to participate in the program, an eligible property owner must, at a minimum:

- 4.1. Agree to participate in annual surveys and Program evaluations, which may include access to utility bill usage information. Enrolling in the [Better Buildings Challenge](#) and sharing the buildings energy data through [EPA Portfolio Manager](#) satisfies this requirement.
- 4.2. Obtain the written affirmative acknowledgment of existing mortgage lenders of participation in the PACE program (See the *Lender Consent* section)
- 4.3. Certify they (and its corporate parent if the property owner is a single-purpose entity) are solvent and that no proceedings are pending or threatened in which the property owner (or the corporate parent, as applicable) may be adjudicated as bankrupt, become the debtor in a bankruptcy proceeding, be discharged from all of the property owner's (or corporate parent's, as applicable) debts or obligations, be granted an extension of time to pay the property owner's (and the corporate parent's, as applicable) debts or be subjected to a reorganization or readjustment of the property owner's (and the corporate parent's, as applicable) debts. The property owner must also certify that the property owner (or any corporate parent if the property owner is a single-purpose entity) has not filed for or been subject to bankruptcy protection in the past three years.
- 4.4. Be current in the payment of all obligations secured by the subject property, including property taxes, assessments and tax liens and have had no delinquencies within the past 3 years (or since taking title to the subject property if it has been less than 3 years). The City and its financing partners may review public records, including the real property records, to verify compliance with this requirement. The City reserves the right to make allowances for certain property tax payment delays that do not reflect financial distress.
- 4.5. Have no involuntary liens, defaults or judgments applicable to the subject property. The City and its financing partners may review public records, including the real property records and court documents, to verify compliance with this requirement. A property owner with an involuntary lien(s), default or judgment may be allowed to participate in the Program if it can demonstrate an acceptable reason for the lien, default or judgment and a path for resolution along with supporting documentation.
- 4.6. The property owner must certify that it is not party to any litigation or administrative proceeding of any nature in which the property owner has been served, and that no such litigation or administrative proceeding is pending or threatened that, if successful, would materially adversely affect the property owner's ability to operate its business or pay the contractual assessment when due, or which challenges or questions the validity or enforceability of the Assessment Contract or any other documents executed by property owner in connection with the Program.
5. Properties that are currently appealing a property tax assessment will be reviewed, and eligibility for the Program will be determined on a case-by-case basis.
6. **Interest Rates and Fees:** Me<sup>2</sup> PACE lenders may charge the market interest rate on PACE loans, plus applicable fees. The market rate for PACE loans is determined by the national PACE market and the particular terms of each loan, and should not be confused with the market rate of traditional commercial mortgage financing.

The City of Milwaukee has the following fees for PACE projects:

- a. The acceptance of the property owner and lender to pay a one-time program operation fee of 0.5% of the total amount of the Qualifying project to the City, up to \$5,000; This fee will be collected as part of the first year's special charge.
- b. The City will also collect an annual administrative fee collected by the City in the amount of 0.25% (up to \$1,000 annually) of the outstanding principal balance of the Loan as of January 1<sup>st</sup> of each year. This fee will be collected as part of the annual special charge.

## **Application and Program Process Flow**

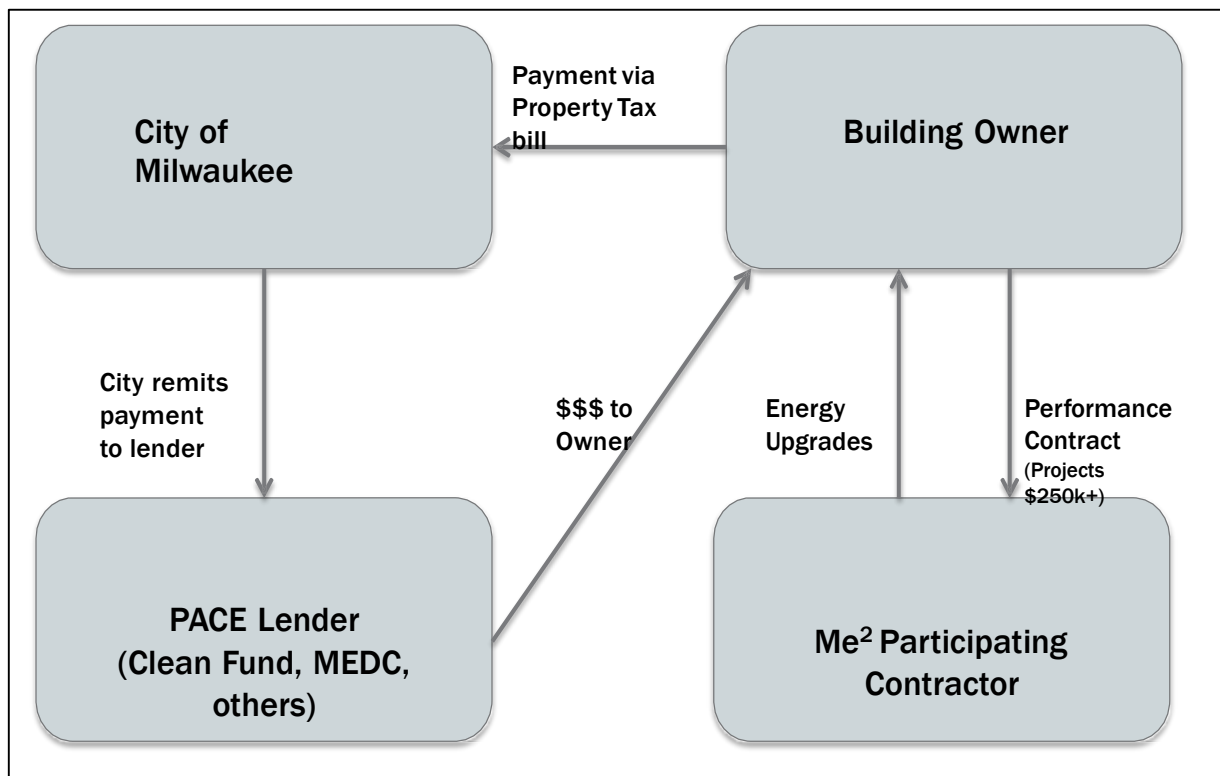
An Eligible Property Owner as Applicant must submit a completed application including the following supporting information on a proposed project to OES or third party entity retained by the City to administer the Program:

1. **Show Interest:** Submit a *Customer Interest Form*, found at [SmartEnergyPays.com/businesses](http://SmartEnergyPays.com/businesses). This form ensures that the property owner fully understands the program requirements prior to developing a project and full application. The City will acknowledge receipt of this form.
2. **Apply:** Submit a completed *Me<sup>2</sup> Commercial PACE Application*, along with supporting documentation, including:
  - a. Signed bid from Participating Me<sup>2</sup> Commercial Contractor for an Eligible Project.
  - b. Savings Analysis detail, documenting energy savings, water savings, maintenance savings, and operations savings; see section 3.8 above for details.
  - c. Energy saving performance contract if project is \$250,000 or more; see section 3.7 above for details.
  - d. Join the [Better Buildings Challenge](#). The Better Buildings Challenge establishes the goal for building owners to reduce their energy use by 20% by the year 2020. The challenge requires monitoring your energy usage using EPA Portfolio Manager and sharing your data with the US Department of Energy and City of Milwaukee. Information on data sharing can be found [here](#).
3. **Get Mortgage Holder Consent:** Provide written consent from the existing mortgage holder(s) on the eligible property for the proposed Financing Agreement and treating the payments under the Financing Agreement as special charges applied to the eligible property pursuant to this Program. A *Request for Lender Acknowledgement and Notice of Proposed Contractual PACE Special Charge* is available at [SmartEnergyPays.com/businesses](http://SmartEnergyPays.com/businesses)
4. **City Approval:** The City and its lending partner will review and approve the project if it meets the program terms.

5. **Financing Agreement with City and Lender:** The property owner, PACE lender (e.g MEDC) and the City will close the financing. Loan closing requires standard bank loan documents, plus *the PACE Financing Program Agreement* (Tri-party agreement between City, Property Owner(s) and PACE lender) contained in **Appendix C**.
6. **Release of Funds:** The property owner will draw funds for the project directly from the lender according to terms agreed between those two parties. No later than October 1<sup>st</sup> of each year, the PACE lender will certify the amount of special charges to be collected from the property, along with a certificate that the work was completed according and paid for by the lending institution.
8. **Pay Special Charge:** The voluntarily-assumed PACE special charge will show up on the property tax bill, issued in December of each year, until the loan is fully repaid. The property owner must make this payment to the City or otherwise face the same repercussions as those that follow non-payment of the annual property tax bill. See Appendix A *Clean Energy Financing Ordinance* for details.

See *Figure 1* below for a diagram of the relationship between parties.

**Figure 1: Relationship of Parties on PACE Transaction**



## Mortgage Holder Consent

The Milwaukee PACE program requires documentation that the primary mortgage holders on the property consent to the PACE financing on that property. A property owner that is applying for or has been pre-approved for PACE financing must gain lender consent prior to closing the PACE loan. Property Owners should this send a *Notice of Proposed Contractual PACE Special Charge* to their existing Lender(s) to (i) provide notice of the proposed participation of the Property in the Program, (ii) request confirmation from the Lender that the levy of the Contractual PACE Special Charge pursuant to the Assessment Agreement will not trigger an event of default or the exercise of any remedies under the Loan documents, (iii) provide notice that the Contractual PACE Special Charge will be collected in installments on the property tax bill in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes, (iv) declare the Property Owner's agreement to pay on a timely basis both the existing obligations secured by the Property (including the Loan) and the proposed Contractual PACE Special Charge, and (v) obtain the consent of the Lender for the Property Owner to participate in the Program, including but not limited to the placement of a Contractual PACE Special Charge on the tax bill for the Property.

In seeking lender consent, the building owner may find it helpful to inform primary mortgage holders that in the event of loan default and tax foreclosure, the total value of remaining principal on the PACE loan is not accelerated and collected; rather, the City will only collect delinquent payments on the loan, including delinquent payments that accrue during the tax foreclosure process. Further, the PACE-financed project may increase the property value and hence property equity.

Copies of the *Notice of Proposed Contractual PACE Special Charge* and *Lender the Acknowledgement to Contractual PACE Special Charge* can be found at [SmartEnergyPays.com/businesses](http://SmartEnergyPays.com/businesses)

## Insurance

If the PACE financing exceeds 10% of the Property Value or is in excess of \$2 million, the property owner shall carry property insurance with the City of Milwaukee and the PACE lender named as an additional insured. The additional insured should be listed as:

City of Milwaukee  
Attn: Erick Shambarger  
200 E Wells Street, Room 603  
Milwaukee WI 53202

## City Approval

OES, or a third party entity retained by the OES, shall review the application to participate in the Program. The OES may approve, subject to conditions, any completed application to participate in the Program that meets the OES's eligibility criteria for approval as an eligible project. The OES shall provide the property owner and proposed third party lender with written notice of the City's approval or disapproval within 30 business days of a completed application being submitted to OES (including all supporting documentation). All approvals of an Eligible Project for recovery of the Financing Agreement payments as a special charge shall be conditioned upon:

- a. The acceptance of the property owner to pay lender fees established by the PACE lenders.
- b. Receipt of primary lien holder consent documents
- c. The signing of a written agreement between the City, property owner and financial institution with minimum terms set forth in Appendix C.

## Recording of the Written Agreement

Participation in the Program for an approved Qualifying project shall be effective upon the recording of the Financing Agreement between the Eligible Property Owner, lender and City with the Milwaukee County Register of Deeds to provide notice to the public of the Financing Agreement. A discharge of the special charge created under this ordinance upon full payment by the property owner or full discharge of the debt by the third party lender shall be recorded with the Milwaukee County Register of Deeds on the Eligible Property.

## Education & Outreach Program

The Office of Environmental Sustainability or its designee shall implement an education and outreach program shall be implemented to make owners of non-residential properties, including 4+ unit multifamily buildings, located within the City of Milwaukee aware of the energy and water savings opportunities available from this Program.

## Participating Contractors

All projects financed through the PACE Financing Program must be installed commercial contractors approved through the Me<sup>2</sup> program. Participating Me<sup>2</sup> contractors must meet the terms of the Community Workforce Agreement approved in Common Council File [130576](#) and subsequent revisions. The most recent Community Workforce Agreement provisions can be found in the [Me<sup>2</sup> Participating Contractor Agreement](#) at [www.SmartEnergyPays.com/contractors](http://www.SmartEnergyPays.com/contractors). The prime contractor on the project is responsible to ensure that every sub-contractor on the project also complies with the terms of the Community Workforce agreement, e.g. by pre-qualifying the subcontractors through OES or its designated third-party administrator.

Contractors who fail to comply with the terms of the Community Workforce Agreement after a PACE project has been approved can be de-barred from future PACE projects.

Building owners who desire to switch contractors after a project has been approved must pre-clear the change with the program. The City or its lending partners may withhold disbursement if a non-Me<sup>2</sup> approved contractor is used on the project.

## **Change Orders**

All change orders on a project must be pre-approved with the City. The contractor shall provide documentation of the change in:

- Project scope
- Project cost
- Energy and operations savings estimates
- Terms to the energy saving performance contract (if the project was originally over \$250,000 or if total project cost exceeds \$250,000 with the change order)

## **Buildings with Multiple Taxkeys**

Buildings with multiple tax keys such as condominiums require additional documentation and underwriting protocol. The PACE special charge must be tied to a tax key that has sufficient property value to underwrite the project. The City will work with building owners on other solutions and will update this program manual accordingly. However, the City reserves the right to deny buildings with multiple taxkeys if any one taxkey cannot support the PACE project.

## **PACE on New Construction**

- PACE application is to be submitted to the city for preliminary approval. This can be done before, during, or no later than 6 months following construction. The amount financed would be subject to the SIR ratio as well as the cap of 20% of appraised value. Because Appraised value would not be known, the approval would be contingent on receiving an adequate appraised value, or the amount of PACE closing proceeds would be reduced on a ratable basis.
- The project would be developed in a manner consistent with the program manual (e.g. use of certified contractors for all the measures included in the PACE scope).
- The PACE Lien is secured after construction is complete and an appraised value is placed on the building. Customer would be responsible for financing development & construction costs in advance of the PACE closing.
- Energy Savings will be defined using a theoretical baseline of code requirements as compared to the actual basis of design for corresponding measures. Measurement & Verification methodologies to follow standard IPMVP protocols.

## Appendix A: Clean Energy Financing Ordinance

### 304-26.5. Clean Energy Financing.

**1. PURPOSE.** The city finds that renovations of privately-owned commercial properties made to improve energy efficiency, save water, use renewable energy, increase property values, stimulate local economic activity, provide environmental benefits and promote the general welfare of city residents. The purpose of this section is to facilitate loans arranged by commercial property owners to make energy-efficient renovations by treating principal and interest repayments, fees and other charges for these loans as special charges eligible for inclusion on the tax bill for these properties.

**2. DEFINITIONS.** a. "Annual installment" means the portion of the loan amount that is due for a particular year under the loan agreement.

b. "Default loan balance" means the outstanding balance of a PACE loan at the time the city receives foreclosure proceeds on a property subject to special charges under this section.

c. "Foreclosure proceeds" means the proceeds resulting from the disposition of a property the city received through an in rem tax foreclosure.

d. "Foreclosure reconstructive costs" means the sum of a stream of costs equal to the annual city portion of property taxes levied a property in in rem tax foreclosure, from the initiation of an in rem tax foreclosure action by the city until the city prevails in a foreclosure action.

e. "Incentive" means any reimbursable or non-reimbursable credit enhancement or other grants of funds by or through the city to a PACE lender in connection with a PACE loan.

f. "Loan agreement" means a written agreement among a borrower, a PACE lender and the city as provided in sub. 7.

g. "Loan amount" means the amount of principal, interest, administrative fees, incentives and other loan charges under the loan agreement to be paid by the borrower under the PACE loan.

h. "PACE" means property assessed clean energy.

i. "PACE default provisions" means the sum of:

i-1. Any additional interest charges the loan agreement stipulates shall be applied to unpaid annual installments levied as special charges under this section onto the property tax bill when the city initiates tax foreclosure on the property.

i-2. Any additional annual installments stipulated by the loan agreement that become due between the time the city initiates tax foreclosure on the property and the date the city receives proceeds from the disposition of the tax foreclosed property.

i-3. Any additional interest charges the loan agreement stipulates shall be applied to annual installments included in paragraph i-2.

i-4. Any default loan balance.

j. "PACE lender" means a lender that makes a PACE loan.

k. "PACE loan" means a loan made by a PACE lender to a borrower under this section for energy-efficiency improvements made to a commercial property.

l. "Reimbursable incentive" means an incentive that must be paid back to the city pursuant to the loan agreement upon the collection of the annual installments or the foreclosure proceeds.

m. "Subject property" means any property on which energy-efficiency improvements have been made and financed through an outstanding PACE loan.

3. STATE COMPLIANCE. Annual installments shall be considered special charges on the subject property, and each year's annual installment shall be levied onto the property tax bill of the subject property pursuant to s. 66.0627, Wis. Stats., as amended.

4. INCENTIVES. The city may offer incentives to the PACE lender subject to the availability of funds or grants.

5. AFFILIATE FINANCING. Nothing in this section shall be construed to prohibit an affiliate of the property owner of a commercial property, including without limitation, a single-member limited liability company owned by the property owner, from providing the funds for a PACE loan with respect to the property. In such case, the property owner shall be considered the borrower, and the affiliate shall be considered the PACE lender.

6. LOAN APPROVAL. a. A prospective borrower applying for a PACE loan shall comply with the loan application process as set forth in the program manual prepared by the department of administration.

b. The department of administration shall approve the financing arrangements between a borrower and a PACE lender.

7. LOAN AGREEMENT. a. The department of administration, the borrower and the PACE lender shall execute the loan agreement which:

a-1. Shall inform the participants that the loan amount shall be considered a special charge, and each year's annual installment shall be levied onto the property tax bill of the subject property as a special charge and be a lien against the subject property pursuant to s. 66.0627, Wis. Stats., as amended.

a-2. Shall set forth the amount of the annual installment due each year.

a-3. Shall stipulate any default interest to be applied to unpaid annual installments. a-

4. May provide for fees to the city to administer the program.

a-5. May provide for prepayments of annual installments by the borrower with a resulting reduction in the special charge for the prepayment, subject to any prepayment premium charged by the PACE lender.

a-6. May allow for amendment by the parties.

b. Each loan shall be amortized over the term of the loan as provided in the loan agreement. The annual installments may be collected in 10 monthly installments pursuant to s. 74.87, Wis. Stats., as amended.

c. The city shall agree in the loan agreement to enforce the special charge under this section and to account for the funds collected as special charges with respect to each subject property.

d. The loan agreement shall require the PACE lender and the borrower to comply with all federal, state and local lending and disclosure requirements and this section.

8. ANNUAL INSTALLMENTS ADDED TO TAX BILLS. The department of administration, following the city's customary practices, shall cause each year's annual installment to be levied onto the property tax bill of the subject property as a special charge pursuant to s. 66.0627, Wis. Stats., as amended, and be a lien against the subject property.

9. COLLECTION OF SPECIAL CHARGES. The department of administration, following the city's customary practices, shall cause each year's annual installments to be levied onto the appropriate property tax bills as special charges. The office of the treasurer shall follow its customary practices to collect special charges under this section once placed on the tax rolls, including assessing penalties and charging interest.

10. REMITTANCE OF SPECIAL CHARGES. a. The office of the treasurer shall not submit special charges levied onto property tax bills under this section to the city comptroller for remittance, or in any other way cause unpaid special charges under this section to be remitted to the department of administration, the PACE lender or any other party.

b. The department of administration shall regularly monitor the property tax bill accounts of subject properties, keep an accounting of payments received by the city for these special charges and obtain written confirmation of these payments from the office of the treasurer. The department of administration shall establish a procedure, in consultation with the city comptroller and the city treasurer, to authorize the city comptroller to remit payments received for special charges levied onto property tax bills under this section to the appropriate PACE lender, less any service fees or incentive reimbursement owed to the city by the PACE lender, taking special precautions to prevent remitting any monies before receipt by the city, on the following schedule:

b-1. Payments in full made by January 31 shall be remitted not later than February 28.

b-2. The sum of installment payments received by May 31 shall be remitted not later than June 30.

b-3. The sum of installment payments received between May 31 and October 31 shall be remitted not later than November 30.

11. ADMINISTRATION AND COLLECTION SERVICES FEES. The department of administration shall, in consultation with the city comptroller and the city treasurer, determine fees to charge the PACE lender for services rendered in administering, collecting and remitting special charges levied onto property tax bills under this section, and shall include these fees in the loan agreement.

12. PROPERTY FORECLOSURE PROCEDURES. a. If an owner fails to pay special charges levied on a property under this section, either in full by January 31 or through a city-approved installment plan, the city treasurer, following its customary and ordinary practices, shall begin a property tax foreclosure proceeding on the subject property at the earliest time allowed under state statutes, unless the condition of the property, or for other reasons, the city determines a foreclosure is not in the best interests of the city. The department of administration shall inform the PACE lender eligible to receive special charge payment remittances on this property of the city's determination not to pursue foreclosure within 30 days of the city's determination not to proceed.

b. If the city is unwilling to foreclose on a subject property, under s. 75.521, Wis. Stats., the PACE lender may request that the city, pursuant to s. 75.106, Wis. Stats., assign the city's right to take judgment against the subject property, provided the PACE lender fully complies with all provisions of s. 75.106, Wis. Stats., as amended, concerning the subject property, and agrees to reimburse the

city for foreclosure costs, pays the city all other charges accruing to the foreclosed property, including but not limited to, special charges other than special charges levied on the property under this section, delinquent utility charges and personal property taxes, special assessments, special taxes, interest and penalties, and property taxes.

13. initial marketing period. a. If the city treasurer prevails in a property-tax foreclosure action against a subject property, the PACE lender may request, and the department of city development shall grant, if requested, a 90-day initial marketing period during which the department of city development shall consider offers to purchase the subject property from the PACE lender before considering any other purchase offers for the subject property. The PACE lender shall have 5 business days after receiving written notice that the department of city development is prepared to market the subject property for sale to request this 90-day initial marketing period, and the 90-day initial marketing period shall begin immediately upon the department of city development's receipt of the PACE lender's request.

b. No PACE lender in violation of s. 304-49-8 shall be eligible to request this 90-day initial marketing period, and a PACE lender shall not sell a subject property acquired under this section to any party in violation of s. 304-49-8.

c. Any purchase offer negotiated during this period shall be approved by the common council as provided in s. 304-49-7.

d. If the PACE lender sells a subject property acquired under this section for an amount that exceeds the sum of PACE default provisions and the purchase cost incurred to buy the property from the city, the PACE lender shall apply this excess to the amount owed the city on the subject property under sub. 14-c-1 to 6 less the amount paid to the city to acquire the property.

14. FORECLOSURE PROCEEDS DISTRIBUTIONS. a. If the city treasurer prevails in a property-tax foreclosure action against a subject property, the foreclosure proceeds shall be credited to the city's reserve for tax deficit fund in accordance with s. 304-49-11.

b. The department of administration shall determine the PACE default provisions when the city receives foreclosure proceeds on a subject property.

c. The department of administration, in consultation with the city comptroller and the city treasurer, shall develop a procedure to authorize the city comptroller to remit to the PACE lender a portion of the foreclosure proceeds to satisfy all or part of the PACE default provisions, provided the foreclosure proceeds exceed the sum total of:

c-1. All costs incurred by the city in pursuing this foreclosure action.

c-2. Any reimbursable incentives paid by the city to the PACE lender or the PACE lender's representative.

c-3. Any administrative fees stipulated in the loan agreement.

c-4. Any interest and penalties accruing to special charges added to the property tax bill under this section.

c-5. All other charges accruing to the foreclosed property, including but not limited to, special charges other than special charges levied on the property under this section, delinquent utility charges and personal property taxes, special assessments, special taxes, interest and penalties, and property taxes.

c-6. All foreclosure reconstructive costs.

## **Appendix B: Eligible PACE Improvements and Expected Useful Life**

[Following page]



## Me<sup>2</sup> Commercial PACE Eligible Improvements (September 2013)

### INTRODUCTION

Me<sup>2</sup> Commercial PACE provides clean energy financing for energy efficiency and renewable energy projects between \$20,000 and \$3 million. PACE financing helps make energy efficiency projects work for your bottom line. The program is offered by the City of Milwaukee's Office of Environmental Sustainability.

PACE Financing allows a property owner to implement energy efficiency and renewable energy improvements without a large up-front cash payment. The property owners that voluntarily choose to participate in the PACE Financing program repay their improvement costs over a set time period (typically 10 to 20 years) through municipal special charges, which are secured by the property itself and paid as an addition to the owner's property tax bill. Non-payment generally results in the same set of repercussions as the failure to pay any other portion of a property tax bill.

### ELIGIBLE IMPROVEMENTS

The Me<sup>2</sup> Commercial PACE program provides financing for a wide variety of commercial energy and water saving projects that can include common measures as well as custom measures. See below for a complete list of eligible common measures. Please refer to the Program Handbook for more details and requirements for the approval of energy efficiency and renewable energy measures under the program. All measures approved for funding under the program must have the capacity to save energy or produce renewable energy as compared to building base case systems. Refer to the program handbook for details on the program requirements. **NOTE: Cost savings from the improvements over the life of the improvement must exceed the improvement cost. The EUL guidelines are being nationalized but currently reflect the California origins of PACE. Applicants may submit an engineering justification for a different EUL that will be reviewed - for a customer-paid fee - by an engineering firm retained by the Program.**

### CONTACT

For details on the Me<sup>2</sup> Commercial PACE program visit [www.smartenergypays.com](http://www.smartenergypays.com)

For any questions on Me<sup>2</sup> PACE financing, contact:

Erick Shambarger, City of Milwaukee

(414) 286-8556

[eshamb@milwaukee.gov](mailto:eshamb@milwaukee.gov)



## Me<sup>2</sup> Commercial PACE Eligible Improvements (September 2013)

### KEY

#### ACRONYMS / DEFINITIONS

ACH	Air changes per hour
ASHRAE	American Society for Heating Refrigeration and Air-conditioning Engineers ( <a href="http://www.ashrae.org">www.ashrae.org</a> )
CADMAC	California DSM Measurement Advisor Committee ( <a href="http://www.calmac.org/">http://www.calmac.org/</a> )
CEE	Consortium for Energy Efficiency ( <a href="http://www.cee1.org">www.cee1.org</a> )
CSI	California Solar Initiative - PV
CSI-Thermal	California Solar Initiative - Water heating
CRRC	Cool Roof Rating Council ( <a href="http://www.coolroofs.org">www.coolroofs.org</a> )
DEER	Database for Energy Efficient Resources ( <a href="http://www.energy.ca.gov/deer/">www.energy.ca.gov/deer/</a> )
DSIRE	Database of State Incentives for Renewables and Efficiency ( <a href="http://www.dsireusa.org">www.dsireusa.org</a> )
DHW	Domestic Hot Water
EMS	Energy management systems
EUL	Expected Useful Life
HET	High Efficiency Toilets
HEU	High Efficiency Urinals
HID	High Intensity Discharge
IC	Internal Combustion
IOU	Investor owned utility
PV	Photovoltaic
SAE	Society of Automotive Engineers
SGIP	Self-Generation Incentive Program
SRCC	Solar Rating and Certification Corporation
VFD	Variable Frequency Drive (aka Adjustable Frequency Drive, Variable Speed Drive)

## Me<sup>2</sup> Commercial PACE Eligible Improvements (September 2013)

### ELIGIBLE ENERGY EFFICIENCY IMPROVEMENTS

System	Subsystem	Measure	Effective Useful Life (yrs)	Source for Effective Useful Life	
<b>Domestic Hot Water (DHW)</b>	Water Heater	Efficient Unit Replacement	14	ASHRAE: DHW	
	Water Heater	DHW Pipe Insulation	20	CADMAC EUL (Appendix F)	
	Commercial Kitchen	Pre-rinse Spray Valve	5	Watersmart Guidebook (EBMUD - 2008)	
	Commercial Laundry	Ozone Laundry System	10	PG&E Work Paper	
	Pumps	Efficient Unit Replacement	24	ASHRAE: Heating Pump	
	Pumps	Trimmed impeller	24	ASHRAE: Heating Pump	
	Pumps	Installing VFD & controls	13	ASHRAE: EMS Controls	
<b>Envelope</b>	Doors	Reduce Building Infiltration	Subject to review		
	Walls	Insulation (Conditioned spaces only)	22	ASHRAE - HVAC Applications 36.3 Table 4: Insulation	
	Roof	Insulation (Conditioned spaces only)	22	ASHRAE - HVAC Applications 36.3 Table 4: Insulation	
	Roof	Cool roof surface	15	DEER 2008: EUL Summary	
	Roof	Green roof installation	Subject to review		
	Windows	High Performance Windows	20	DEER 2008: EUL Summary	
	Windows	Window film installation	10	DEER 2008: EUL Summary	
<b>Lighting</b>	Fluorescent	Efficiency Improvement	12	DEER 2008: EUL Summary	
	Compact Fluorescent	Efficiency Improvement	12	DEER 2008: EUL Summary	
	Induction Lighting	Efficiency Improvement	12	DEER 2008: EUL Summary	
	Cold Cathode Lamps	Efficiency Improvement	12	DEER 2008: EUL Summary	
	HID	Efficiency Improvement	14	DEER 2008: EUL Summary (avg of all HID)	
	Bi-Level Fixtures	Replace existing lighting in Stairwells and Garages with Bi-level Lighting fixtures	16	DEER 2008: EUL Summary	
	Exit Signs	Replace with LED / LEC exit Sign	16	DEER 2008: EUL Summary	
	Exit Signs	Replace with self-luminescent	16	DEER 2008: EUL Summary	
	Interior Lighting	Replace with Induction or LED	10	IOU-specific Measure Evaluations	
	Exterior Lighting	Replace with Induction or LED	10	IOU-specific Measure Evaluations	

## Me<sup>2</sup> Commercial PACE Eligible Improvements

	Street Lighting	Replace with Induction or LED	10	IOU-specific Measure Evaluations	
	Daylighting	Skylights	NA	NA	
	Controls	Demand Response Controls	13	ASHRAE: EMS Controls	
	Controls	Lighting scheduling controls	8	DEER 2008: EUL Summary	
	Controls	Daylighting controls	16	DEER 2008: EUL Summary	
	Controls	Occupancy sensors	8	DEER 2008: EUL Summary	
	General	De-lamping			
<b>HVAC</b>	AC/Split Systems/Heat Pumps	Efficient Unit Replacement	18	ASHRAE: AC/HP/Split	
	AHUs	Airflow distribution improvements	24	ASHRAE - HVAC Applications 36.2 Table 3: DX air dist equip	
	AHUs	Economizer (Air or Water-side)- Repair or New Unit	10	IOU-specific Measure Evaluations	
	Boilers	Burner upgrade	21	ASHRAE-HVAC Apps 36.3 Table 4: Burners	
	Boilers	Combustion fan VFD	13	ASHRAE: EMS Controls	
	Boilers	Economizers	10	IOU-specific Measure Evaluations	
	Boilers	Efficient Unit Replacement	22	ASHRAE - HVAC Applications 36.2 Table 3: Boilers, HW, steel gas-fired	
	Boilers	Heat recovery	22	ASHRAE - HVAC Applications 36.2 Table 3: Boilers, HW, steel gas-fired	
	Boilers	Oxygen trim controls	15	IOU-specific Measure Evaluations	
	Boilers/Chillers	Pipe Insulation	20	CADMAC EUL (Appendix F)	
	Chillers	Add water-side economizer	15	DEER 2008: EUL Summary	
	Chillers	Efficient Unit Replacement	21	ASHRAE: Chillers	
	Chillers	Heat recovery	25	ASHRAE: Chiller, Heat Recovery	
	Cooling Tower	Installing VFD & controls - fans	13	ASHRAE: EMS Controls	
	Cooling Tower	Replacement or add. capacity	22	ASHRAE - HVAC Applications 36.2 Table 3: Cooling Towers, metal	
	Energy Management Controls	Cooling tower fan sequencing	13	ASHRAE: EMS Controls	
	Energy Management Controls	Demand Response Controls	13	ASHRAE: EMS Controls	
	Energy Management Controls	Improved scheduling capability	13	ASHRAE: EMS Controls	
	Energy Management Controls	Sensors calibration/optimal relocation	13	ASHRAE: EMS Controls	
	Energy Management Controls	Ongoing-commissioning software			
	Evaporative Cooling Systems	Offset existing mech. cooling	15	DEER 2008: EUL Summary	
	Fans	Installing VFD & controls	13	ASHRAE: EMS Controls	

## Me<sup>2</sup> Commercial PACE Eligible Improvements

	Furnaces	Condensing furnaces	18	ASHRAE - HVAC Applications 36.3 Table 4: Furnace	
	HVAC System (General)	Duct testing and sealing	Subject to review		
	HVAC System (General)	Duct testing and sealing	Subject to review		
	HVAC System (General)	VAV system conversions	15	IOU-specific Measure Evaluations	
	HVAC System (General)	Radiant Heating / Cooling	Subject to review		
	HVAC System (General)	Geothermal HVAC	Subject to review		
	HVAC System (General)	Thermal Storage for Load Shifting	Subject to review		
	Steam Heating	Install/Replace Steam Traps			
	Labs	Reduced ACH	15	IOU-specific Measure Evaluations	
	Labs	VAV fume hoods	15	IOU-specific Measure Evaluations	
	Motors	Efficient Unit Replacement	18	ASHRAE: Motors	
	Pumps	Efficient Unit Replacement	19	ASHRAE: Cooling Pumps	
	Pumps	Trimmed impeller	19	ASHRAE: Cooling Pumps	
	Pumps	Installing VFD & controls	13	ASHRAE: EMS Controls	
	Ventilation	Demand controlled ventilation	21	ASHRAE: Exhaust Fan	
	Ventilation	Garage CO controls	21	ASHRAE: Exhaust Fan	
Refrigeration	Refrigerated Cases / Walk-ins	Addition of insulation	11	DEER 2008: EUL Summary	
	Refrigerated Cases / Walk-ins	Anti-sweat heater controls	12	DEER 2008: EUL Summary	
	Refrigerated Cases / Walk-ins	Auto-closers for cooler/freezer doors	8	DEER 2008: EUL Summary	
	Refrigerated Cases / Walk-ins	Case-lighting Controls	13	ASHRAE: EMS Controls	
	Refrigerated Cases / Walk-ins	Efficient evaporator fan motors	18	ASHRAE: Motors	
	Refrigerated Cases / Walk-ins	Efficient Unit Replacement	13	ASHRAE: Refg. Equipment	
	Refrigerated Cases / Walk-ins	Evaporator fan controllers	16	DEER 2008: EUL Summary	
	Refrigerated Cases / Walk-ins	High Efficiency Display Cases	13	ASHRAE: Refg. Equipment	
	Refrigerated Cases / Walk-ins	Improved Defrost Controls	13	ASHRAE: EMS Controls	
	Refrigerated Cases / Walk-ins	Install doors w/ low/no anti-sweat heat	12	DEER 2008: EUL Summary	
	Refrigerated Cases / Walk-ins	Installing Night covers	5	DEER 2008: EUL Summary	
	Refrigerated Cases/Walk-ins	Suction line insulation	22	ASHRAE - HVAC Applications 36.3 Table 4: Insulation	
	Thermal Storage Systems	Thermal Storage for Load Shifting	Subject to review		
	Compressors	Add VFD and Controls	13	ASHRAE: EMS Controls	
	Compressors	Added Heat Recovery	15	IOU-specific Measure Evaluations	
	Compressors	Addition of Mechanical Sub-cooling	15	DEER 2008: EUL Summary	
	Compressors	Efficient Unit Replacement	15	IOU-specific Measure Evaluations	

## Me<sup>2</sup> Commercial PACE Eligible Improvements

	Compressors	Floating Head Pressure Controls	15	DEER 2008: EUL Summary	
	Compressors	Floating Suction Pressure	15	DEER 2008: EUL Summary	
	Condensers	Efficient Unit Replacement	15	DEER 2008: EUL Summary	
	Condensers	Evaporative Condensers	20	ASHRAE - HVAC Applications 36.3 Table 4: Condensers, Evaporative	
	Condensers	Floating Head Pressure	15	DEER 2008: EUL Summary	
	Condensers	Replace Air Cooled with Evaporative Condenser	20	ASHRAE - HVAC Applications 36.3 Table 4: Condensers, Evaporative	
	Controls	Retro-commissioning	10	DEER 2008: EUL Summary	
<b>Compressed Air</b>	Air Compressors	Efficient Unit Replacement	20	ASHRAE - HVAC Applications 36.3 Table 4: Recip Compressors	
	Compressed Air Storage	Additional compressed air storage	15	IOU-specific Measure Evaluations	
	Controls	Improved compressor sequencing	13	ASHRAE: EMS Controls	
	Controls	Improved scheduling or controls	13	ASHRAE: EMS Controls	
<b>Process / Plug Loads</b>	Boilers	Efficient Unit Replacement	22	ASHRAE - HVAC Apps 36.2 Table 3: Boilers, HW, steel gas-fired	
	Boilers	Burner upgrade	21	ASHRAE - HVAC Apps 36.3 Table 4: Burners	
	Boilers	Combustion fan VFD	13	ASHRAE: EMS Controls	
	Boilers	Economizers	10	IOU-specific Measure Evaluations	
	Boilers	Heat recovery	22	ASHRAE - HVAC Applications 36.2 Table 3: Boilers, HW, steel gas-fired	
	Boilers	Oxygen trim controls	15	IOU-specific Measure Evaluations	
	Chillers / Cooling	Efficient Unit Replacement	15	IOU-specific Measure Evaluations	
	Air / Water Distribution System	Efficiency Improvement	12	IOU-specific Measure Evaluations	
	Fans	Efficient Unit Replacement	20	ASHRAE - HVAC Applications 36.3 Table 4: Fans	
	Fans	Installing VFD & controls	13	ASHRAE: EMS Controls	
	Industrial Process	Equip. scheduling for load reduction	Subject to review		
	Industrial Process	Process improvement	Subject to review		
	Motors	Efficient Unit Replacement	18	ASHRAE: Motors - NRR manual	
	Elevators	Hoisting and Standby improvements	Subject to review		
	Pool	Add pool cover	6	IOU-specific Measure Evaluations	
	Pool	Efficient Heater Replacement	5	DEER 2008: EUL Summary	
	Pool Pump	Reduce/Optimize Flow/Configuration	13	ASHRAE: EMS Controls	
	Pool Pump	Replace Motor	18	AHRAE: Motors - NRR manual	

## Me<sup>2</sup> Commercial PACE Eligible Improvements

	Pool Pump	Replace Pump	20	ASHRAE - HVAC Apps 36.3 Table 4: Pumps	
	Pool Pump	Variable Flow	15	IOU-specific Measure Evaluations	
	Pumps	Efficient Unit Replacement	20	ASHRAE HVAC Apps 36.3 Table 4: Pumps	
	Pumps	Installing VFD & controls	13	ASHRAE: EMS Controls	
Mobility	Elevators		20		
	Escalators		20		

### ELIGIBLE WATER CONSERVATION IMPROVEMENTS

System	Subsystem	Measure	Effective Useful Life (yrs)	Source for EUL	
Domestic Water Use	Toilets	Efficient Unit Replacement	20	Watersmart Guide (EBMUD - 2008)	
	Urinals	Efficient Unit Replacement	10	Watersmart Guide (EBMUD - 2008)	
	Commercial Kitchen	Pre-rinse Spray Valve	5	Watersmart Guide (EBMUD - 2008)	
	Laundry Systems (Multi-family dwellings)	Efficient Unit Replacement	13	Water Conservation Handbook (2002) - pg 125	
Commercial Kitchens	Pre-Rinse Valves	Efficient Unit Replacement	5	Watersmart Guide (EBMUD - 2008)	
	Dishwashers	Efficient Unit Replacement	10	Watersmart Guide (EBMUD - 2008)	
	Commercial Ice-makers	Efficient Unit Replacement	6	Watersmart Guide (EBMUD - 2008)	
Laundry & Laundromats	Commercial Laundry	Efficient Unit Replacement	13	Water Conservation Handbook (2002) - pg 125	
	Commercial Laundry	Retrofit with wastewater recovery system	TBD		
HVAC	Cooling Towers	Upgrades to Reduce Bleed-off and Drift	TBD		
	Condensers	Upgrades to Reduce Bleed-off and Drift	TBD		
	Steam Boilers	Upgrades to Reduce Bleed-off	TBD		
Industrial / Process Water	Steam Sterilizers / Autoclaves	Efficient Unit Replacement	10	Watersmart Guidebook (EBMUD - 2008)	



## Me<sup>2</sup> Commercial PACE Eligible Improvements

	Car Wash Operations	Water Recycling System	TBD		
	Manufacturing	Film / X-Ray Processing	TBD		
	Manufacturing	Food / Beverage Processing	TBD		
	Manufacturing	Metal Finishing	TBD		
	Manufacturing	High Tech Manufacturing	TBD		

### ON-SITE CLEAN ENERGY PRODUCTION

System	Subsystem	Measure	Effective Useful Life	
<b>Renewable - Thermal Energy</b>				
DHW	Service water	Solar thermal water heat	35	
HVAC	Heating	Solar thermal space heat (hydronic)	35	
Process	Pool	Solar pool heat	20	
<b>Renewable - Electrical Energy</b>				
Photovoltaic	PV	PV System	20-25	
Microturbine (Renewable fuel)	Micro-turbine using renewable fuel	Micro-turbine	15	
Internal Combustion Engine (ICE) (Renewable fuel)	ICE using renewable fuel	Internal combustion engine	15	
Fuel Cell (Renewable fuel)	Electric-only fuel cell using renewable fuel	Fuel cell	15	
<b>Non-Renewable - Electrical Energy</b>				
<i>Subject to review: Contact Me<sup>2</sup> PACE</i>	Electric-only fuel cell using non-renewable fuel (e.g., natural gas)	Grid-tied fuel cell	15	

EUL of solar hot water (SHW) from Center for Sustainable Energy 2008 Natural Gas Cost Effectiveness Model

[http://energycenter.org/index.php/incentive-programs/solar-water-heating-pilot-program/swhpp-documents/cat\\_view/55-rebate-programs/172-swhpp/321-cpuc-documents](http://energycenter.org/index.php/incentive-programs/solar-water-heating-pilot-program/swhpp-documents/cat_view/55-rebate-programs/172-swhpp/321-cpuc-documents)

EUL of PV from "CPUC Self-Generation Incentive Program – Fifth Year Impact Evaluation Report", Itron, March 2007. Range (20-25) depends on type of PV material.

P.U. ode 216.6 applies to cogeneration of heat and power using non-renewable fuel

<http://law.onecle.com/california/utilities/216.6.html>

## INELIGIBLE MEASURES

The following are non-qualifying efficiency measures.

Compact fluorescent, screw-in lamps.

Plug load devices.

Measures that are not permanently installed and can be easily removed.

Measures that save energy solely due to operational or behavioral changes

Power correction, power conditioning.

Any measure that does not result in energy savings or renewable energy production.

Any measure that can not be explained in terms of industry-standard engineering or scientific principles.

Vending machine controllers

Refrigerant charge (AC/Split Systems/Heat Pumps)

## **Appendix C: PACE Financing Program Agreement (Tri-party Agreement)**

[Following page]

Document Number

PACE SUPPLEMENTAL LOAN  
AGREEMENT  
Document Title

## PACE Supplemental Loan Agreement (Municipal Special Charge)

Notice: This Agreement provides for the levying of special charges against real estate pursuant to Section 66.0627, Wis. Stats., **and may impact future owners of the Property and holders of other interests in all or part of the Property**, all as more fully described herein. Interested parties are advised to contact the City of Milwaukee, Dept. of Administration's Office of Environmental Sustainability for the most current information regarding any such charges outstanding under this Agreement.

### Recording Area

Name and Return Address

City of Milwaukee  
Department of Administration  
200 East Wells Street, Room 606  
Milwaukee, WI 53202  
ATTN: Erick Shambarger

Parcel Identification Number (PIN)

[Tax Key]

## PACE SUPPLEMENTAL LOAN AGREEMENT

**THIS PACE SUPPLEMENTAL LOAN AGREEMENT** (this “Agreement”), is made and entered into this [ ] day of [Month, Year] (the “Effective Date”) by and among the City of Milwaukee by and through its Department of Administration (“City”), the [lender name], a [description such as: Wisconsin non-stock corporation] (“Lender”), and [Property Owner] (“Property Owner”), and is made a part of that certain [primary loan document such as: CONSTRUCTION LOAN AGREEMENT] dated as of the same date made by and between Lender and Property Owner, such Construction Loan Agreement hereafter referred to as the “Loan Agreement.”

### WITNESSETH:

**WHEREAS**, Property Owner is the owner of certain real property located at [address] in the City of Milwaukee (the “Property”), further described on Exhibit A, attached hereto;

**WHEREAS**, City has adopted a Clean Energy Financing Program, also known as the Me2 program (the “Program”) pursuant to Common Council File No. 121591, codified as Section 304-26.5 of the Milwaukee Code of Ordinances, as amended from time to time (the “Ordinance”);

**WHEREAS**, Property Owner has obtained the written consent of all persons or entities that currently hold mortgage liens on the Property, if any, to the Loan and the PACE Special Charges, both as herein defined;

**WHEREAS**, pursuant to the terms of the Program, City has approved Property Owner’s application for implementation of an energy efficiency, water savings and/or renewable energy improvement project at the Property as described on Exhibit B attached hereto (the “Project”);

**WHEREAS**, as part of Property Owner’s approved application attached hereto as Exhibit C (the “Approved Application”), Property Owner warranted that the Project shall be installed by Me2 Approved Contractors and will achieve a savings to investment ratio of greater than 1.0, as more specifically described in the PACE Financing Program Manual;

**WHEREAS**, Lender has agreed to make a loan to Property Owner in the amount of [loan value] (the “Loan”) to be used towards the implementation of the Project;

**WHEREAS**, the Project consists of “energy efficiency improvements” as that term is used in Section 66.0627 of the Wisconsin Statutes (the “Act”), which allows City to collect the annual installments on the Loan as municipal special charges;

**WHEREAS**, City has agreed to levy special charges, collect the special charges on the property tax bill for the Property and remit payments on such special charges to Lender to be applied to pay down the Loan, all as more particularly set forth herein and in the Ordinance;

**WHEREAS**, pursuant to the Program, City may offer reimbursable and non-reimbursable credit enhancements or other grants of funds or special incentives to Lender for the Project (the “Incentives”); and

**WHEREAS**, City's Department of Administration (the "Program Administrator") is authorized to enter into this Agreement pursuant to the Ordinance.

**NOW, THEREFORE**, for and in consideration of the making of the Loan, City's approval of the Project and the financing and collection arrangements between Lender, Property Owner and City, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, LENDER, PROPERTY OWNER and CITY agree as follows:

1. Defined Terms. The following capitalized terms used in this Agreement shall have the meanings defined or referenced below or in the Recitals above:

"Annual Installment" means the portion of the Loan Amount that is due in a particular year as more fully described in Sections 2 and 5 hereof.

"City Parties" shall have the meaning set forth in Section 14(b) hereof.

"County Recorder" means the Register of Deeds for Milwaukee County.

"Disbursement Amount" shall have the meaning set forth in Section 6(a) hereof.

"Foreclosure Proceeds" means the proceeds resulting from the disposition of the Property by City in an in rem tax foreclosure.

"Incentives" shall have the meaning set forth in the Recitals above.

"Installment Certification" shall have the meaning set forth in Section 5(d) hereof.

"Liabilities" shall have the meaning set forth in Section 14(b) hereof.

"Loan" shall have the meaning set forth in the Recitals above.

"Loan Amount" means the outstanding amount of all principal under the Note, accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, default interest rate charges, prepayment premiums or administrative expenses related to the Loan, including without limitation, the administrative fees set forth in Section 16 hereof and any and all other administrative fees to be paid to City by Property Owner in connection with the Loan.

"Loan Agreement" shall have the meaning set forth in the Preamble above.

"Maximum Disbursement Amount" shall have the meaning set forth in Section 6(a) hereof.

"Me2 Approved Contractors" means those commercial contractors approved through the Program, as more fully described in the PACE Financing Program Manual.

"Note" shall have the meaning given such term in the Loan Agreement.

“PACE Financing Program Manual” means the Property Assessed Clean Energy (PACE) Financing Program Manual published by the Program Administrator from time to time.

“Property” shall have the meaning set forth in the Recitals above.

“Reimbursable Incentives” means the Incentives set forth on Exhibit F attached hereto that must be paid back to the City upon the collection of the Annual Installments or the Foreclosure Proceeds.

“PACE Special Charges” means the aggregate amount of all Annual Installments of the Loan Amount, which Annual Installments shall be levied by the City as municipal special charges pursuant to Section 66.0627(8)(a) of the Wisconsin Statutes.

“Paying Agent” means the third party paying agent designated by Lender on Exhibit G attached hereto, if any, who shall be selected by Lender to handle the duties designated to it by Lender under this Agreement and the Loan Agreement, and whose fees shall be paid for by Borrower in accordance with the provisions of the Loan Agreement.

“Tax Year” means the period from January 1 through the following December 31.

2. Payments. The Loan Amount shall be payable in Annual Installments, based on an [Loan term such as: eighteen (18) year] amortization. The Loan shall bear interest, including default interest, at the rates set forth in the Note and payments shall be due under the Note and the Loan Agreement as more fully described therein and in Section 5 of this Agreement, ending upon payment in full of the Loan Amount and all other charges, fees, expenses and other amounts due under this Agreement, the Loan Agreement and the Note. The amounts of the Annual Installments are based on a Loan Amount of [Numerical Loan Amount]. Each Annual Installment may be further divided into ten monthly installment payments as more particularly set forth below and shall be remitted by City to Lender according to the schedule outlined in the Ordinance. The Loan shall be fully amortized over the [number] year term of the Loan, and shall be repaid on the terms set forth in this Agreement, the Loan Agreement and the Note. In the event the Loan proceeds have not been fully disbursed by October 1 of the first year of the Loan term, then the Annual Installment for the initial tax year shall be adjusted to reflect the actual principal amount disbursed by such date to Borrower and the amortization schedule shall be adjusted accordingly.

3. Consent to PACE Special Charges.

(a) By entering into the Agreement, City hereby agrees to enforce the PACE Special Charges and levy and impose the Annual Installments on the property tax bill of the Property as provided in the Ordinance and in Section 5 below. Upon execution of this Agreement, City will cause this Agreement to be recorded in the office of the County Recorder against the Property.

(b) Property Owner hereby agrees and acknowledges that the Property is subject to the PACE Special Charges and consents to the levy of the Annual Installments. Property Owner further agrees and acknowledges that Annual Installments of the PACE Special Charges are a lien on the Property as provided in the Act and the Ordinance and failure to pay the PACE Special Charges may result in foreclosure of the Property in accordance with the terms of the Ordinance.

4. Term. This Agreement shall remain in full force and in effect until the Loan Amount and all other charges, fees, expenses and other amounts due under this Agreement, the Loan Agreement and the Note have been paid in full.

5. Annual Installments Added to Property Tax Bill.

(a) During the term of this Agreement, the Annual Installments will be added to the property tax bill for the Property and collected as more particularly described below.

(b) The aggregate amount of all PACE Special Charges shall equal the Loan Amount which is also the Maximum Disbursement Amount as defined in Section 6(a) and as shown on Exhibit D attached and incorporated by this reference. The Program Administrator, following City's customary practices, shall cause the Annual Installments to be added to the tax bill of the Property for each year of the term of this Agreement.

(c) The estimated amount of the initial Annual Installment is set forth on Exhibit D. That estimate is based on the assumptions set forth in the Exhibit, including the assumption that the Maximum Disbursement Amount has been disbursed to Borrower. In the event the Loan proceeds have not been fully disbursed to Borrower by October 1 of the first year of the Loan term, then the Annual Installment for the initial tax year shall be adjusted to reflect the actual principal amount disbursed by such date to Borrower. The Program Administrator, following City's customary practices, shall cause the actual amount of the initial Annual Installment to be added to the tax bill of the Property, in accordance with (d) below. The parties anticipate that some or all of the Loan proceeds will be disbursed prior to October 1, 201\_, so that the 201\_ tax bill for the Property shall include the actual amount of the initial Annual Installment (which may be an amount less than future Annual Installments). **[Strike if not applicable]**

(d) No later than October 1 in each year during the term of this Agreement, Lender or the Paying Agent shall confirm and certify to the Program Administrator the amount of the Annual Installment that will be due in the following year for the Property and the then outstanding Loan Amount (the "Installment Certification"). The Installment Certification shall be in form substantially similar to Exhibit E, attached hereto. Upon receipt of the Installment Certification, the Program Administrator, following City's customary practices, shall cause the appropriate Annual Installment to be added to the tax bill of the Property for the applicable year.

(e) Property Owner hereby agrees to pay the property tax bills for the Property during the term of this Agreement in a timely fashion and in any event no later

than January 31 of each year or, to the extent authorized by City and permitted under Section 74.87 of the Wisconsin Statutes, in a ten equal installments each year. Property Owner agrees that all property tax bills will be timely paid so as to avoid any default or delinquency in such payment

(f) In the event Property Owner fails to pay all or part of any Annual Installment when due, the parties hereto acknowledge and agree that (i) late payment charges and default interest on the unpaid amounts of the Annual Installments shall accrue in favor of Lender as set forth in the Note, (ii) such late payment charges and default interest shall be added to the PACE Special Charges and shall be included as part of the Annual Installments due thereafter unless and until all such accrued and unpaid default interest is paid in full, and (iii) such default interest shall be in addition to any and all penalties and interest that may be imposed by or accrue in favor of City as a result of Property Owner's failure to pay real estate or other property taxes or other assessments on the Property. In addition, Annual Installments shall continue to be added to Property Owner's tax bill notwithstanding Property Owner's failure to pay all or part of any past Annual Installment, such that City shall continue to levy Annual Installments, including default interest to be paid to Lender, until either the Loan Amount, including all accrued and unpaid interest, is paid in full or either City or Lender has acquired title to the Property pursuant to Section 8 or Section 9 of this Agreement.

(g) Property Owner hereby acknowledges and agrees that failure to pay any Annual Installment of the PACE Special Charges, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing in favor of Lender on the amounts due, in addition to penalties and interest that may accrue in favor of City. In addition, City may have the right to initiate a foreclosure action on the Property as a result of any delinquent Annual Installments of the PACE Special Charges, as set forth in Sections 8 and 9 below, as City or Lender's sole remedy for failure to pay the PACE Special Charges, except as otherwise expressly provided in the Note. City hereby waives City's right to seek personal liability for the PACE Special Charges and the other Loan Amounts due hereunder, including pursuant to Wis. Stats. §74.53, but City does not waive in any respect City's right to seek personal liability for any other tax deficiencies of any kind or nature due City by Property Owner, pursuant to Wis. Stats. §74.53 or otherwise.

## 6. Adjustments and Prepayment.

(a) Subject to the terms and conditions in the Loan Agreement, Lender agrees to disburse to Property Owner an amount equal to the actual cost of the Project (the "Disbursement Amount"); provided the Disbursement Amount shall not exceed [Written Loan Amount] [(\$ Numerical Loan Amount)] (the "Maximum Disbursement Amount"). If the Disbursement Amount is less than the Loan Amount, Lender shall recalculate the Annual Installment amounts based on the remaining amortization term and so notify the Program Administrator. If any payments have been made in excess of the amount disbursed, the Program Administrator may make an appropriate refund by crediting the refund amount against the next Annual Installment of the PACE Special Charges.

(b) Property Owner may prepay the Loan in full, but not in part, by paying the outstanding principal amount of the Loan together with all accrued and unpaid interest, penalties, fees and other charges and accrued and unpaid Reimbursable Incentives, plus any prepayment premium due Lender, all as more fully set forth in the Loan Agreement and the Note. Lender or the Paying Agent shall certify to Property Owner and Program Administrator the aggregate amount due on the Loan, including principal, interest, and fees and any prepayment premium, within thirty (30) days of receipt of a written request therefor from Property Owner or Program Administrator. City shall certify to Property Owner and Lender any and all Reimbursable Incentives and other amounts due City under this Agreement within thirty (30) days of receipt of a written request by Property Owner or Lender.

(c) Without the prior written consent of Lender, which consent may be given or withheld in Lender's sole discretion, the Loan may not be prepaid in part and, if such consent is given, any such partial prepayment must be made in strict compliance with the terms and conditions set forth in such written consent, which terms and conditions may include a prepayment penalty. Any partial prepayment in violation of this provision will not be accepted by Lender.

7. Collection of Annual Installments; Payments to Lender.

(a) City shall follow its customary practices to collect the Annual Installments once placed on the tax roll, including assessing penalties and charging interest.

(b) City agrees to separately account for any Annual Installment payments collected or otherwise received for the Property. City shall remit the collected Annual Installment payments to Lender in accordance with the payment schedule set forth in Section 10(b) of the Ordinance as in effect on the date of this Agreement.

8. Delinquent Annual Installment; In Rem Foreclosure. If Property Owner becomes delinquent in the payment of an Annual Installment, then City, through the office of the city treasurer, following its customary and usual practices, shall begin a property tax foreclosure proceeding on the Property at the earliest time allowed under the Wisconsin Statutes and otherwise in accordance with the provisions of Chapters 74 and 75 of the Wisconsin Statutes; provided, however, in the event City determines based on the condition of the Property or other reasons that foreclosure of the Property is not in the best interests of City, then the procedures set forth in Section 9 below shall apply. In the event City elects to initiate a foreclosure proceeding, then:

(a) City hereby agrees to commence and diligently pursue such action to foreclose on the property tax lien as soon as legally permissible under the Act, the Ordinance and Section 75.521 of the Wisconsin Statutes.

(b) If the property tax lien against the Property is to be foreclosed pursuant to Section 75.521 of the Wisconsin Statutes and City obtains a judgment vesting City with title to the Property, City shall take all commercially reasonable efforts to lease or sell the Property. Lender may, in its sole discretion, request and if requested, City shall grant, the

right to an exclusive 90-day marketing period during which Lender shall have the sole right to market the Property to third parties and/or make an offer to purchase the Property itself. Any offers to purchase the Property during Lender's exclusive marketing period must be approved by the Common Council of the City. City agrees not to offer the Property for sale itself or with a third party (other than Lender) or consider any offers for the Property other than those presented by Lender during the exclusive marketing period. Pursuant to the Ordinance, City's Department of City Development is required to give Lender notice that City is prepared to market the Property. Lender shall have five (5) business days after receipt of such notice from City's Department of City Development to advise City of its intent to exclusively market the Property. The ninety (90) day exclusive marketing period shall commence immediately upon City's receipt of Lender's notice and shall conclude ninety (90) days thereafter; provided however, if Lender has presented a bona fide offer for the purchase of the Property to City prior to the expiration of the ninety (90) day marketing period and negotiations with respect to such offer have not completed prior to such expiration, then City agrees not to offer the Property for sale itself or through any party other than Lender and agrees not to consider any other offers for the purchase of the Property until City has responded to the offer presented by Lender and negotiations with respect to such offer have been completed, such that the ninety (90) day marketing period shall be tolled until the parties have completed their negotiations of any offers presented by Lender to City during Lender's marketing period. Upon request from Lender, and in City's sole discretion, City may grant Lender an additional ninety (90) day exclusive marketing period. Lender shall not be eligible to request the exclusive marketing periods if Lender is in violation of Section 304-49(8) of City Ordinances and Lender may not sell the Property to any party in violation of Section 304-49(8) of City Ordinances.

(c) After a sale or lease of the Property, the Program Administrator shall ensure that the Foreclosure Proceeds are processed as follows:

i. First, net proceeds from the sale or lease are to be determined by subtracting from the sale or lease proceeds the following:

- (1) All costs incurred by City in pursuing the foreclosure action;
- (2) Any Reimbursable Incentives paid by City to Lender;
- (3) Any administrative fees to be paid to City under this Agreement to the extent any such fees remain due and owing;
- (4) Any interest and penalties accruing to special charges added to the Property's property tax bill under the Ordinance;
- (5) All actual costs, including personnel costs associated therewith, for maintenance costs, board-up costs, clean-up costs, demolition costs and all other costs that are reasonable and necessary to

sell the Property, including real estate and broker fees paid in connection with the sale or lease of the Property;

(6) All other charges accruing to the Property, including but not limited to, special charges other than Special Charges levied on the Property under the Ordinance, delinquent utility charges and personal property taxes, special assessments, special taxes, interest, penalties, and property taxes; and

(7) All “foreclosure reconstructive costs” as defined in the Ordinance.

ii. Any remaining proceeds shall be paid over to Lender up to the Loan Amount, including all interest, fees and penalties. All proceeds remaining after payment to Lender of the Loan Amount, including all interest, fees and penalties, shall be retained by City. In the event the Foreclosure Proceeds are insufficient to pay all amounts due to Lender in connection with the Loan, Lender, at its option, may enter into such agreements with the new owner or lessor of the Property regarding repayment of any outstanding amounts due Lender in connection with the Loan.

9. Delinquent Annual Installment; No Foreclosure by City. If the Property Owner becomes delinquent in the payment of an Annual Installment and City determines that foreclosure of the Property is not in the best interests of City, based on the condition of the Property or other reasons, then City shall, within thirty (30) days of City’s determination not to pursue foreclosure, advise Lender of such determination. Lender may, but shall not be obligated to, request City, pursuant to Section 75.106 of the Wisconsin Statutes, as the same may be renumbered or amended from time to time, assign to Lender City’s right to take judgment against the Property pursuant to Section 75.521 of the Wisconsin Statutes, as the same may be renumbered or amended from time to time. Provided that Lender (i) complies with all of the provisions of Section 75.106 of the Wisconsin Statutes applicable to Lender, (ii) agrees to reimburse City for all foreclosure costs reasonably incurred by City in connection with the Property, and (iii) agrees to pay City all other charges owed to City and accrued on the Property, including but not limited to special charges other than Special Charges levied on the Property under the Ordinance, delinquent utility charges, personal property taxes, special assessments, special taxes, interest and penalties, and delinquent property taxes owed to City, then City will, upon receipt of such request, forthwith assign to Lender City’s rights to take judgment against the Property.

10. City Representations regarding Loan and Loan Documents. City hereby represents to Lender and to Property Owner that (i) it is and will be duly authorized under all applicable laws to execute this Agreement, (ii) this Agreement is and will be the valid and legally enforceable obligation of City, enforceable in accordance with its terms except to the extent that enforcement thereof may be subject to bankruptcy and other similar laws affecting creditors’ rights generally, and (iii) this Agreement and the dollar amount and all other terms and conditions of the Loan as set forth herein, the Loan Agreement and the Note are in compliance with the provisions of the Act and the Ordinance. City shall at all times, to the extent permitted

by law, defend, preserve and protect the PACE Special Charges created by this Agreement and all the rights of Lender hereunder against all claims and demands of all other persons whomsoever.

11. Other Obligations Payable from Special Charges. The City will not issue or incur any obligations payable from the proceeds of the PACE Special Charges nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge upon the PACE Special Charges or the Annual Installments, except for administrative fees as provided in this Agreement and fees, commissions, costs and other charges payable for the marketing and sale or lease of the Property in the event City forecloses on the Property.

12. Re-Levy of Special Charge. If City shall have omitted to make, assess or collect any PACE Special Charges when it is required by this Agreement or by the Ordinance to have done so, then City shall either: (i) take all necessary steps to cause new PACE Special Charges (equal in amount to those not assessed, levied or collected plus interest and penalties, if any, thereon) to be levied against the Property in addition to those PACE Special Charges otherwise to be levied or assessed against the Property, or (ii) in its sole discretion, pay to Lender the amount of the PACE Special Charges not collected from legally available moneys.

13. No Guaranty by City of Repayment of Loan. The City does not assume any responsibility for or guarantee in any manner whatsoever, in whole or in part, the repayment of the Loan between Property Owner and Lender or the payment of the PACE Special Charges or any Annual Installment. In no event shall City ever be required to expend its own funds directly or indirectly on the Project.

14. Property Owner Responsibility; Indemnification.

(a) Property Owner acknowledges that City has established the Program solely for the purpose of facilitating loans arranged by owners of commercial property located in the City for the purpose of making energy-efficient renovations by treating principal and interest repayments, fees and other charges for these loans as special charges eligible for inclusion on the tax bill for such properties. The Program is a collection program only. Neither City nor Lender nor any of their respective officials, agents, employees, attorneys or representatives, nor the Program Administrator nor Program staff are responsible for selection, management or supervision of the Project or the Project's performance. Any issues related to performance of the Project should be discussed with chosen contractors or installers, and the manufacturer or distributor of the Project.

(b) To the extent permitted by law, Property Owner shall indemnify, defend, protect and hold harmless City and any and all officials, agents, employees, attorneys and representatives of City (collectively, the "City Parties") from and against all losses, liabilities, claims, damages, penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, any bodily injury or death or property damage occurring in or upon the Property through any cause whatsoever the presence of Hazardous Substances

(hereinafter defined) on the Property or arising out of any circumstance that results in a material, adverse devaluation of the Property as the result of any act or omission of the Property Owner (collectively, the “Liabilities”), regardless of whether such Liabilities shall accrue or are discovered before or after the disbursement of the Loan Amount or any portion thereof. Notwithstanding the foregoing, Property Owner’s indemnities under this section shall not extend to Liabilities arising from City’s intentional default, fraud or willful misconduct. “Hazardous Substance” means any substance, whether solid, liquid or gaseous which is listed, defined or regulated as a “hazardous substance”, “hazardous waste” or “solid waste”, or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law (hereinafter defined); or which causes or poses a threat to cause a contamination on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. “Environmental Law” means any federal, state, county or municipal statute, ordinance, regulation, rule, order, judgment, permit or decree or common law, now or hereafter in effect, relating to pollution or protection of human health, safety or the environment (including but not limited to ambient air, surface water, ground water, land surface or subsurface strata), or relating to waste disposal, or relating to worker safety, emissions, discharges, releases or threatened releases of Hazardous Substances or other environmental matters.

(c) The indemnity obligations described in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Agreement.

#### 15. Waiver of Claims.

(a) For and in consideration of City’s execution and delivery of this Agreement, Property Owner, for itself and for its successor-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives the right to recover from the City Parties, and fully and irrevocably releases the City Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys’ fees and court costs, that Property Owner may now have or hereafter acquire against any of the City Parties and accruing from or related to (i) this Agreement, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Annual Installments, (iv) the imposition of the lien of the PACE Special Charges, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project, (xii) the workmanship of any third parties, and (xiii) any other matter with respect to the Program (the “Waived Claims”). This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner’s release of the City Parties. Notwithstanding the foregoing, Property Owner’s release under this Section

shall not extend to Waived Claims arising from City's intentional default, fraud or willful misconduct.

(b) The waivers and releases by Property Owner contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Agreement.

16. Administrative Fees.

(a) Property Owner agrees to pay a one-time administration processing fee to City in the amount of 0.5% of the Loan Amount, or [Written Dollar Amount] Dollars [(\$ Numerical Dollar Amount)]. Such payment shall be included in the initial Annual Installment.

(b) The Annual Installments shall include an annual administrative fee to be collected by City in the amount of 0.25% of the outstanding principal balance of the Loan (up to an annual maximum of One Thousand and no/100 Dollars (\$1,000)) as of January 1<sup>st</sup> of each year. This fee shall be included, on an annual basis, in the Annual Installments to be set forth on Installment Certification attached hereto as **Exhibit E**.

17. Incentives. All reimbursable and non-reimbursable Incentives and the terms and conditions of all such Incentives offered by or through City, including, without limitation, all Reimbursable Incentives, are set forth on **Exhibit F**.

18. Notices.

All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by registered or certified mail, return receipt requested, postage prepaid; or (c) sent to the parties at their respective addresses indicated herein by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Property Owner, to:

[Property Owner name]  
[Address]

(with a copy to)

[Attorney Name]  
[Attorney Address]

or to such other person or address as Property Owner shall furnish to Lender and City in writing.

(b) If to Lender, to:

[Lender name, address, and contact]

(with a copy to)

[Attorney Name]

[Attorney Address]

or to such other person or address as Lender shall furnish to Property Owner and City in writing.

(c) If to City, to:

City of Milwaukee  
Department of Administration  
200 East Wells Street  
Milwaukee, WI 53202  
Attention: Erick Shambarger

(with a copy to)

City of Milwaukee  
Office of the City Attorney  
200 East Wells Street  
Milwaukee, WI 53202

or to such other person or address as City shall furnish to Property Owner and Lender in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); if sent by registered or certified mail, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); and if sent by overnight courier pursuant to this Section, such communication shall be deemed delivered upon receipt. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

19. Supremacy. In the event of any conflict, inconsistency or ambiguity between the provisions of this Agreement and the provisions of the Loan Agreement, the provisions of this Agreement shall control.

20. Application Compliance. In applying for the Loan, Property Owner represents and warrants that it has fully complied with the loan application process as set forth in the PACE Financing Program Manual.

21. City Approval of Approved Application. By its entry into this Agreement, City, through its Department of Administration, represents, warrants and covenants that it has approved of the financing arrangements between Property Owner and Lender. City, through its Department of Administration, further represents, warrants and covenants that the Approved Application was reviewed and approved by City in compliance with the provisions of the

Ordinance, and that the Project complies in all respects with the Act and the Ordinance, including compliance with any and all energy savings guarantee requirements.

22. Compliance with Laws. Lender and Property Owner hereby agree to comply with all applicable federal, state and local lending and disclosure requirements and with the provisions of the Ordinance.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed a single agreement.

24. Amendment. This Agreement may be amended only by a writing signed by Property Owner, Lender and City.

25. Severability. If any one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect of to any extent, such finding shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

26. Transferability. Lender and City agree that this Agreement shall run with the land and that upon any transfer of the Property, "Property Owner" shall become the transferee and the transferor shall be released from any obligation or liability hereunder.

[Signature Pages Follow]

Executed as of the date set forth above.

**[PROPERTY OWNER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[LENDER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF MILWAUKEE ACTING BY  
AND THROUGH  
DEPARTMENT OF  
ADMINISTRATION**

Assistant City Attorney, \_\_\_\_\_,  
as a member in good standing of the State  
Bar of Wisconsin, hereby approves the  
signatures of the City of Milwaukee  
representatives, and also authenticates the  
signatures of each of City of Milwaukee  
representative per Wis. Stat. § 706.06 so this  
document may be recorded per Wis. Stat. §  
706.05(2)(b).

By: \_\_\_\_\_  
State Bar No. \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Sharon Robinson  
Title: Director, Department of  
Administration

By: \_\_\_\_\_  
Name: Erick Shambarger  
Title: Environmental Sustainability  
Program Manager

Approved as to Content, Form, and  
Execution: \_\_\_\_\_, \_\_ 201\_\_

\_\_\_\_\_  
Assistant City Attorney

**Property Owner Notary**

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, the above named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, to me known to be such person who executed the foregoing instrument and acknowledged the same in such capacity.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

**Lender Notary**

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, the above named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, to me known to be such person who executed the foregoing instrument and acknowledged the same in such capacity.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

## **EXHIBIT A**

### **Legal Description of Property**

[Legal Description of Property]

Address: [Property Address]

Tax Key Number: [Tax Key]

## **EXHIBIT B**

### **Description of Project**

## **EXHIBIT C**

### **Approved Project Application**

## EXHIBIT D

### SCHEDULE OF ESTIMATED INITIAL ANNUAL INSTALLMENT

<u>PACE SPECIAL CHARGES</u>	<u>TAX YEARS</u>	<u>INITIAL ANNUAL INSTALLMENT</u>	<u>INITIAL MONTHLY INSTALLMENT</u>
[\$ Loan amount]	[Term]	[\$ Interest amount]	[\$ Installment amount]

The Maximum PACE Special Charges and Estimated Initial Annual Installments are based on the following assumptions:

1. The Lender disburses the Maximum Disbursement Amount to Property Owner.
2. The Lender disburses all Loan proceeds to Property Owner or the Disbursing Agent (as defined in the Construction Loan Agreement) on the date the City executes this Agreement. Interest accrues from the date of disbursement.
3. It is assumed that the Property Owner will elect to pay the Annual Installment of the PACE Special Charges with ten (10) installments as allowed by Section 74.87(3), Wisconsin Statutes and interest is added to the Maximum Disbursement Amount for this time period each year of the Special Charge.

Following the disbursement of the Disbursement Amount, the Program Administrator will adjust the Maximum PACE Special Charges and the Annual Installments, if necessary, to reflect the actual PACE Special Charges based upon the Disbursement Amount, the date of disbursement of the Disbursement Amount (or the date of the first progress payment and the date of the final progress payment if the Lender makes partial disbursements of the Disbursement Amount pursuant to the Agreement) as certified to Program Administrator by Lender and Property Owner. If any refund is required, the Program Administrator may make the refund by crediting the refund amount against the next Annual Installment(s).

## EXHIBIT E

### Lender's Form of Installment Certification

Property Tax Key No.	Borrower	Date of PACE Loan	Annual Installment to Lender (A)	Annual Administrative Charge to City (B)	Total Annual Installment/Special Charge (A+B)	Number of Installments Remaining	Outstanding Loan Amount

The undersigned, an authorized representative of the [Lender Name] ("Lender") hereby certifies that the information contained in this Installment Certification is true and accurate, and may be relied upon by the City of Milwaukee ("City") in connection with those certain Construction Loan Agreements and those certain PACE Supplemental Loan Agreements as detailed above.

**LENDER:** [LENDER NAME]

<b>By:</b>	<b>Date:</b>
<b>Printed Name:</b>	<b>Title:</b>

*[Appendix C- PACE Supplemental Loan Agreement]*

**EXHIBIT F**

**Terms and Conditions of Incentives**

NONE

## **EXHIBIT G**

### **Third Party Paying Agent**

☐ A Paying Agent selected by Lender will be used in connection with the Loan.

☐ A Paying Agent will not be used in connection with the Loan.